



FEBRUARY 6, 2006

Via Electronic Mail
nepataskforce@mail.house.gov

NEPA Draft Report Comments
c/o NEPA Task Force
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20001

Re: AGA Comments on Initial Findings and Draft Recommendations of Task Force
on Improving and Updating NEPA, Committee on Resources, U.S. House of
Representatives

To the Honorable Members of the NEPA Task Force:

The American Gas Association (AGA) appreciates the opportunity to comment on the initial findings and draft recommendations made in a report dated December 21, 2005 by the staff to the Task Force on Improving and Updating the National Environmental Policy Act (NEPA). AGA commends the House Committee on Resources and the Task Force for undertaking this important and formidable task.

The American Gas Association, founded in 1918, represents 197 local energy utility companies that deliver natural gas to more than 56 million homes, businesses and industries throughout the United States. AGA's members account for roughly 83 percent of all natural gas delivered by the nation's local natural gas distribution companies. AGA is an advocate for local natural gas utility companies and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas companies and industry associates. Natural gas meets nearly one-fourth of the United States' energy needs. Our Association is sharply focused on assisting its member utilities obtain and deliver stable supplies of clean-burning natural gas, safely and reliably. For more information, go to www.aga.org.

Over the past five years American consumers of natural gas have borne the brunt of ever increasing prices, the natural outcome of an increasingly tight balance between supply and demand. During that time the price for natural gas has increased over 400 percent, causing severe financial hardship for manufacturers, farmers, homeowners and

other consumers throughout the land. AGA believes that NEPA reform can help ease the supply demand imbalance and reduce financial hardship on consumers by making environmental reviews for natural gas production, transmission and delivery projects more effective and efficient.

AGA's specific comments on the Task Force Recommendations are as follows.

Group 1 – Addressing Delays in the Process

Recommendation 1.1: Amend NEPA to define “Major Federal Action”

AGA supports the recommendation to define “major federal action” in the statute so that the term would “only include new and continuing projects that would require substantial planning, time, resources, or expenditures.” In addition, categories of projects that typically are not “major federal actions” should be categorically excluded from NEPA review. We believe it is important when crafting the statutory definition of “major federal action” to provide very clear criteria for identifying projects that would require “substantial planning, time, resources or expenditures” and to avoid or define broad terminology such as “major” and “significant.”

This reform should help agencies determine when an environmental impact statement (EIS) is really warranted. Under existing (ambiguous) law, agencies err on the side of extreme caution, and seem to default to preparing an EIS without questioning whether an action is truly “major.”

Recommendation 1.2: Amend NEPA to add mandatory timelines for competing NEPA documents.

AGA supports this recommendation to set an 18-month limit on the time to prepare and complete an EIS, and to set a 9-month limit on the time to prepare and complete an EA. We agree that this should be the rule, and that exceptions should be allowed only in unusual situations and only when approved by the Council on Environmental Quality (CEQ).



AGA Comments on NEPA Draft Report
February 6, 2006
Page 3 of 8

Recommendation 1.3: Amend NEPA to create unambiguous criteria for the use of Categorical Exclusions (CE), EAs, and EISs.

AGA supports this recommendation. We especially support amending NEPA “to state that temporary activities and other activities that have clearly minimal impacts should be evaluated under a CE unless the agency has compelling evidence to utilize another process.” Projects to repair sections of natural gas pipelines and natural gas utility lines are small, linear, and temporary, and their impacts are clearly minimal. Natural gas pipeline and gas utility line repairs should be evaluated under a categorical exclusion.

Recommendation 1.4: Amend NEPA to address supplemental documents.

AGA supports this recommendation to codify criteria for deciding when to prepare supplemental environmental assessments (EAs) or EISs.

AGA also strongly supports the related Group 8 recommendations that will help create more certainty in part by clarifying the meaning of “cumulative impacts.” Business plans and work schedules are built around final agency actions. Delays are particularly problematic when there are numerous supplemental EAs and EISs required after the process is concluded.

Group 2 – Enhancing Public Participation

Recommendation 2.1: Direct CEQ to prepare regulations giving weight to localized comments.

AGA does not support 2.1 in its current form, because it could inadvertently give undue weight to stakeholders who oppose projects on emotional grounds – the proverbial “not in my backyard” (NIMBY) response. The interests of local stakeholders should be considered, and as with all comments, we would hope the federal decision maker will give weight to well-reasoned, substantive comments offered by those most affected by the proposed decision.

Recommendation 2.2: Amend NEPA to codify the EIS page limits set forth in 40 C.F.R. 1502.7.

This is a recommendation to codify the following EIS page limits: “The text of final environmental impact statements (e.g., paragraphs (d) through (g) of §1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.” 40 C.F.R. §1502.7 (emphasis added).

AGA supports this recommendation, with one suggested change. We concur that EIS documents have grown too long. However, we are concerned that an overly prescriptive page limit could result in more public dissatisfaction in some cases. It is important to provide enough flexibility so that an agency has enough space to describe an unusually complex project completely enough to prevent misunderstanding of the project by the public. Therefore, AGA recommends providing clear criteria to help an agency determine when a proposal should be considered to be of “unusual scope or complexity” that warrants an EIS to be longer than 150 pages. Second, to ensure that the exception does not swallow the rule, but that exceptions are allowed when appropriate, we recommend requiring CEQ approval for exceeding the 150 or 300 page “normal” page limits. This would be similar to the CEQ approval suggested in Recommendation 1.2 for exceeding the normal time limits for completing an EIS.

With those two changes, AGA supports Recommendation 2.2, as we believe this will help improve efficiency, focus environmental analysis on potential significant impacts, and reduce NEPA-related costs.

Group 3 – Better Involvement for State, Local and Tribal Stakeholders

Recommendation 3.1: Amend NEPA to grant tribal, state and local stakeholders cooperating agency status.

AGA opposes this recommendation. The process of identifying potential non-federal cooperating agencies, inviting them to be cooperating agencies, receiving a response from them, and then implementing a formal agreement with all cooperating agencies would delay the start of scoping and would add significant time to the overall NEPA process. Our members have found that the cooperating agency process has created some confusion.



AGA Comments on NEPA Draft Report
February 6, 2006
Page 5 of 8

NEPA regulations already contain provisions for stakeholder involvement (40 C.F.R. 1501.7). Rather than grant non-federal agencies cooperating agency status and attempt to negotiate an agreement with an unwieldy number of agencies, it would be better to clarify rules for stakeholder involvement. AGA recommends that NEPA should be amended to direct CEQ to issue regulations to clarify the stakeholder involvement procedures and to encourage more stakeholder involvement. (See comment on recommendation 6.1.)

Recommendation 3.2: Direct CEQ to prepare regulations that allow existing state environmental review process to satisfy NEPA requirements.

AGA supports this recommendation, as it should help reduce redundancy and improve efficiency in the environmental review process.

Group 4 – Addressing Litigation Issues

Recommendation 4.1: Amend NEPA to create a citizen suit provision

AGA supports creating a citizen suit provision, subject to the criteria described in recommendation 4.1 with one exception. We oppose the 180 day period for filing citizen suits. Instead, the time frame for filing a citizen suit should be 30 days – the same period that is already established for filing appeals.

Recommendation 4.2: Amend NEPA to add a requirement that agencies “pre-clear” projects.

AGA supports 4.2.

Group 5 – Clarifying Alternatives Analysis

Recommendation 5.1: Amend NEPA to require that “reasonable alternatives” analyzed in NEPA documents be limited to those which are economically and technically feasible.

AGA supports 5.1. In addition, we recommend clarifying that when comparing the anticipated impacts of a linear pipeline project to other reasonable alternatives, that the impacts of digging a trench, burying a pipeline and restoring vegetation above the line are mostly temporary. Agency officials involved in NEPA review often are more familiar with highway projects, and they often conduct the alternative impacts analysis with the

false assumption that pipeline projects and highways have similar environmental impacts, which is not the case. Highways remain above ground and have more permanent impacts on the environment than buried pipelines.

Recommendation 5.2: Amend NEPA to clarify that the alternative analysis must include consideration of the environmental impact of not taking an action on any proposed project.

AGA supports 5.2. The “no action alternative” should also include the economic impacts of taking “no action” – for example of not approving the construction of a natural gas pipeline -- on the project proponent and on others who would benefit from the proposed action, such as industrial, commercial, small business and residential consumers of natural gas, as well as the employees of manufacturers who rely on natural gas as a feed stock for their products.

Recommendation 5.3: Direct CEQ to promulgate regulations to make mitigation proposals mandatory.

AGA requests that the Task Force clarify recommendation 5.3. If NEPA is amended to direct CEQ to require that federal agencies include in any mitigation proposal a binding commitment to proceed with the mitigation, then the NEPA amendment should also direct CEQ to make it clear to all parties that the mitigation proposal does not have to be complete when the permit is issued. Instead, appropriate mitigation could be made a condition of the agency’s order and made legally enforceable. Otherwise, recommendation 5.3 as it stands could create another barrier to expediting the NEPA review and decision making process by requiring the project proponent to complete all mitigation proposals prior to the issuance of a license or permit. This would not save time or cost. It would *increase* delays and cost.

Group 6 – Better Federal Agency Coordination

Recommendation 6.1: Direct CEQ to promulgate regulations to encourage more consultation with stakeholders.

AGA supports 6.1. We support the effort to encourage more stakeholder involvement rather than granting cooperating agency status to stakeholders (as in recommendation 3.1). We also recommend clarifying in the statute what “periodically consult in a formal sense” means.



AGA Comments on NEPA Draft Report
February 6, 2006
Page 7 of 8

Recommendation 6.2: Amend NEPA to codify CEQ regulation 1501.5 regarding lead agencies.

AGA supports 6.2. We believe it is particularly important to spell out lead agency responsibility "to develop a consolidated record for NEPA reviews, EIS development, and other NEPA decisions."

Group 7 – Additional Authority for the CEQ

Recommendation 7.1: Amend NEPA to create a "NEPA Ombudsman" within the CEQ.

AGA supports 7.1. This could help improve conflict resolution.

Recommendation 7.2: Direct CEQ to control NEPA related costs.

AGA supports 7.2.

Group 8 – Clarify meaning of "cumulative impacts."

Recommendation 8.1: Amend NEPA to clarify how agencies would evaluate the effect of past actions for assessing cumulative impacts.

AGA supports 8.1 to provide reasonable bounds on the scope of cumulative impacts analysis.

Recommendation 8.2: Direct CEQ to promulgate regulations to make clear which types of future actions are appropriate for consideration under the cumulative impact analysis.

AGA supports 8.2.



AGA Comments on NEPA Draft Report
February 6, 2006
Page 8 of 8

Group 9 – Studies.

Recommendation 9.1: CEQ Study of NEPA's interaction with other Federal environmental laws.

AGA supports 9.1 to reduce redundancy and improve efficiency of the environmental review process.

Recommendation 9.2: CEQ Study of current Federal agency NEPA staffing issues.

AGA supports 9.2 to improve the quality of NEPA staff at key Federal agencies, especially in the area of project management..

Recommendation 9.3: CEQ study of NEPA's interaction with state "mini-NEPAs."

AGA supports 9.3 to reduce redundancy and improve efficiency of the environmental review process.

If you should have any questions, please call Pam Lacey at 202-824-7340.

Respectfully submitted,

American Gas Association

A handwritten signature in black ink that reads "Pamela A. Lacey". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

By: _____
Pamela A. Lacey
Senior Managing Counsel
(202) 824-7340
placey@aga.org